IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 840 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GORDHANBHAI MANGALBHAI PARMAR & 4 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1 - 5.
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE
Date : 17/06/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. The appellants-original accused Nos.1,2,3,5 and

6 were convicted for the offence under Secs.302 read with Sec.149 of IPC by the learned Addl. Sessions Judge, Nadiad, to undergo life imprisonment and under Secs.143, 144, 147 read with Sec.149 to undergo three months SI with fine of Rs.200/- in default, SI for one week whereas original accused Nos.4,7 and 8 were convicted for the offence under Secs.143, 323, 504 read with Sec.149 of IPC to undergo S.I. for three months.

2. Short facts of the prosecution case are as under:

2.1 That on 5-7-1996 at about 10.00 p.m., when complainant Raisingbhai Sankarbhai Parmar after taking supper was sleeping on cot (charpai) in front of his hut, he heard the sound of altercation between the appellant No.2-Bhailalbhai Shanabhai Parmar, No.3-Ishwarbhai Mangalbhai Parmar and No.4-Kanubhai Poonambhai Parmar on the one side and Ramanbhai, son of the complainant on the other. As Ramanbhai was being abused by the accused, brother of Ramanbhai,

Kabhaibhai Raisingbhai also went there to calm down the situation. The accused who were having deadly weapons in their hands like dharia, danti and sticks assaulted Ramanbhai and Kabhaibhai. As they shouted for help, the complainant being their father went there. At that time, other three accused namely, original accused No.4-Bhanubhai Punambhai Parmar, No.7-Natubhai Mangalbhai Parmar and No.8-Laxmanbhai Punambhai Parmar also came out with deadly weapons and gave blow to the complainant, his wife and another son, Somabhai resulting into their injuries. As the accused gave serious blows on various parts of the body of Ramanbhai and Kabhaibhai, both fell down and succumbed to injuries sustained by them. As other people came there, accused ran away. Thereafter, complainant went to Borsad Police Station along with one person and lodged the complaint Ex.33. The offence was registered as Borsad Police Station C.R.No.152 of 1996

punishable under Secs.143, 147, 148, 302, 323 and 504 read with Sec.140 of IPC. As the investigation was handed over by PSO to PSI, Mr.Joshi, he came to the scene of offence along with the complainant where bodies of deceased Ramanbhai and Kabhaibhai were lying. He studied the scene of offence and as there was no light, other formalities could not be completed but later on inquest panchnama was drawn and also made arrangements for sending the bodies of Ramanbhai and Kabhaibhai for post mortem. He also drew panchnama of scene of offence as shown by the complainant and also recorded statements of various witnesses. Thereafter, he tried to search the accused. As soon as the accused were available, they were interrogated and after preparing recovery and discovery panchnama, muddamal weapons and other things produced by the accused were seized and even panchnama of accused were also drawn. Thereafter, accused were sent to

judicial custody. Muddamal seized during the course of investigation were sent to FSL for analysis. On arrival of FSL report and post mortem report, they were kept along with investigation papers and on completion of investigation, charge sheet was submitted into the Court.

2.2 As the case against accused was triable exclusively by the Court of Sessions, learned J.M.F.C. committed the case into the Court of District and Sessions Judge, Kheda at Nadiad, and it was transferred to the Court of learned Addl. Sessions Judge by numbering it as Sessions Case No.260 of 1996. The learned Addl. Sessions Judge framed charge against the accused. The accused pleaded not guilty to the charge and prayed for trial.

2.3 To prove the charge against the appellant, the prosecution examined various witnesses and also placed reliance on various

documentary evidence. On filing of closing purshis by the prosecution, learned Addl. Sessions Judge, Kheda at Nadiad recorded further statement of the accused under Sec.313 of Cr.P.C. As the accused did not step into the witness box nor did they examine any witness, the learned Addl. Sessions Judge, Kheda at Nadiad, after giving opportunity of hearing to the parties concerned, convicted the accused as aforesaid vide the impugned judgment and order.

2.4 Being aggrieved and dissatisfied with the said judgment and order of conviction passed by the learned Addl. Sessions Judge, Kheda at Nadiad, present appeal has been preferred by the appellants-original accused Nos.1,2,3,5 and 6.

2.5 This appeal was listed on the board for final hearing in our Court in the session beginning from 12th June, 2006.

3. Heard learned counsel, Mr.H.M.Parikh for the appellants and learned APP, Mr.R.C.Kodekar, on

behalf of the respondent-State at length.

4. Mr.Parikh, mainly concentrating his arguments on conviction of the appellants under Sec.302 read with Sec.149 of IPC, submitted that as such there are no evidence to that effect. According to him, if the entire evidence is accepted in toto, then also, there are no evidence to show that the appellants were the members of illegal assembly and continued till end with deadly weapons and hence, in any circumstances of the matter, it cannot be said that there was any illegal assembly. It can also not be said that there were more than five members with ulterior motive who continued themselves as members of illegal assembly till the end taking active part in it.

4.1 Mr.Parikh drew our attention towards oral evidence of various witnesses. According to him, as per the prosecution case, there are three eye witnesses namely, P.W.No.2 Raisingbhai Shankarbhai Parmar Ex.32, the complainant and

father of both the deceased; P.W.No.11 Somabhai Raisingbhai Parmar Ex.61, the son of the complainant as well as brother of both the deceased and P.W.No.12 Gordhanbhai Raghunathbhai Ex.62, the neighbour and relatives of families of both the complainant and accused. Minutely taking us through the evidence of aforesaid three eye witnesses along with complaint Ex.32, he submitted that even as per the say of the prosecution, wife of the complainant and mother of the deceased Kamlaben was also there at the place of incident. Though her statement was recorded, prosecution chose not to examine her and therefore, according to him, prosecution relied upon above three eye witnesses and complainant only. He submitted that since the complainant was sleeping in front of his hut, he would not be able to see the scene of offence in view of the distance between place of incident and his house. Further, the incident took place

during night time and when he reached the scene of offence, incident was over and therefore, complainant cannot be said to be an eye witness. Even as per the say of the prosecution witnesses Somabhai and Kamlaben, Gordhanbhai came on the spot later on after the complainant and, therefore, according to him, all the witnesses who claimed themselves as eye witnesses cannot be treated as eye witnesses. At the most, they can be said to have reached the scene of offence at the earliest after the incident. Mr.Parikh further concentrated his arguments towards para 3 of chief examination of the complainant Raisingbhai and submitted that even as per the complainant, altercation took place between Bhailalbhai Shanabhai, Ishwarbhai Mangalbhai, Kanubhai Poonambhai on the one side and Ramanbhai on the other and hence, his another son Kabhaibhai went to the house of the accused to pacify them. At that time, Ishwarbhai Mangalbhai

Parmar (accused No.3), Bhailalbhai Shanabhai Parmar (accused No.2) and Kanubhai Poonambhai Parmar (accused No.5) assaulted first on Kabhaibhai and thereafter on Ramanbhai with deadly weapons namely, danti, dharia, etc. Reading further, he submitted that there are discrepancies between the oral evidence of complainant and the FIR regarding the weapons held by them as being dharia or danti. According to Mr.Parikh, Raisingbhai has deposed that after hearing the noise, his wife Kamlaben and son Somabhai also went there and Bhanubhai Poonambhai gave stick blow on left hand of Kamlaben and Laxmanbhai Poonambhai gave stick blow on her left shoulder while Natubhai Mangalbhai Parmar gave stick blow to his son Somabhai. Meanwhile, other people including his son Bhimsingbhai, neighbours Gordhanbhai Raghunathbhai and Mafatbhai Bhikhabhai came for their rescue and, therefore, accused left the place. He further submitted that

even if the say of Raisingbhai is accepted in toto, then also, only three persons appear to have seen the accused Nos.2,3 and 5 inflicting blows with deadly weapons on both his sons Kabhaibhai and Ramanbhai meaning thereby that other accused have not played any role at all and, therefore, Sec.149 of IPC will not be attracted against them because at the time of incident, only three persons were there who alleged to have used weapons and killed both. From the deposition of Raisingbhai Ex.32, FIR Ex.33 as well as from the detailed cross examination of Raisingbhai, he tried to establish that there was a bore for water and a babul tree and house of Chanabhai Motibhai was 8-10 feet away from the scene of offence while houses of Bhailalbhai Shanabhai and Kanchanbhai Shanabhai were 10-12 feet away from the scene of offence. It further reflects from the cross examination of the complainant that certain questions were asked

regarding inquest panchnama, panchnama of scene of offence and complaint lodged by him by going to the Police Station.

4.2 Mr.Parikh also took us through the evidence of P.W.No.11 Sombhai Raisingbhai Parmar at Ex.61 and also of P.W.No.12 Gordanbhai Raghunathbhai at Ex.62, the eye witness. According to prosecution witness No.12, when he was at his residence, he heard the altercation between the parties. He has categorically deposed that Ishwarbhai Bhailalbhai and Kanubhai Poonambhai assaulted Kabhaibhai. As he shouted for help, his uncle Raisingbhai also went there where he saw Bhailalbhai and Ishwarbhai inflicting blows with danti on the head and also on backside of neck of Kabhaibhai as result of which, Kabhaibhai fell down. As Ramanbhai also went there, Bhailalbhai and Gordhanbhai gave blows on the head of Ramanbhai while Laxmanbhai Poonambhai gave stick blows on the shoulder of

Raisingbhai, Bhanubhai Poonambhai gave stick blows on Kamlaben on her left wrist and Natubhai gave stick blow to Somabhai and when Somabhai tried to defend himself, he received injuries below his left eye. Thereafter, as other persons came there, accused left the place. Certain questions were asked to this witness regarding his presence with Raisingbhai at the time of lodging the complaint at Borsad Police Station, presence of PSI, Joshi at Police Station and also regarding other aspects of the matter and tried to prove certain contradictions to that effect.

4.3 He further took us through the discussion made by the learned Judge in the judgment regarding the discrepancy in the weapons as being dharia and danti and also showed us from the evidence regarding the size of upper portion of danti and dharia. He further took us through post mortem note and evidence of doctor who performed the post mortem and submitted that injury

attributed against the person who was having dharia in his hand and the injury described by the doctor are not matching with each other.

4.4 It was further submitted by Mr.Parikh that there is a delay in filing the FIR. According to him, N.C. filed by the accused No.1-Gordhanbhai Mangalbhai at 0005 hours is first in point of time whereas FIR was registered later on at 0015 hours. In this regard, he took us through the evidence of PSI, Shri Joshi knowing fully well that N.C. has not been exhibited and, therefore, he placed reliance only upon the cross examination of PSI, Mr.Joshi, as well as the evidence of Constable, Mr.Amarsinhbhai, who registered the N.C. wherein names of the accused were disclosed for the first time. A doubt has been raised by the learned counsel for the appellants that though the offence has been disclosed against the person lodging the N.C., he has not been detained by the I.O. It was further

submitted that the aspect of ownership of the property in question allegedly purchased by Ramanbhai has not been proved and hence, no motive has been established by the prosecution.

4.5 A contention has been raised by Mr.Parikh that panchnama drawn Sec.27 has not been properly proved and hence, it cannot be said to be a panchnama drawn under Sec.27 of the Indian Evidence Act. In this regard, he drew our attention towards judgments in the case of Anter Singh Vs. State of Rajasthan reported in AIR 2004 S.C. 2865 and in the case of Jackaran Singh Vs. State of Punjab reported in 1995 Cri.L.J. 3992.

4.6 Having made the aforesaid lengthy submissions, he concentrated towards appellant Nos.1 and 5 i.e. original accused Nos.1 and 6 respectively in the appeal and submitted that at the most, prosecution is able to prove the case against the other three appellants-accused. Since the appellants Nos.1 and 5 did not play any

role either in giving blows to the deceased or in taking part in the above incident as they came to the place later on, Sec.149 of IPC is not applicable against them and hence, they may be acquitted.

5. Learned Addl. Public Prosecutor, Mr.R.C.Kodekar took us through the evidence shown and relied upon by the learned counsel for the appellants namely oral evidence of P.W.No.2 Raisingbhai S. Parmar Ex.32; P.W.No.11 Somabhai R. Parmar Ex.61, P.W.No.12 Gordhanbhai Raghunathbhai Ex.62, who are all witnesses of incident. The incident took place at 10.00 p.m. and the place of incident being very near to the houses of these witnesses and accused, presence of witnesses and their family members as well as neighbours at the place of incident will be there and cannot be doubted in the normal circumstances because at night generally persons would be at their respective houses. It was further submitted that

if the cross-examination of the above witnesses is seen, then also, nothing adverse raising doubt about the presence of these eye witnesses and other persons at the time of incident could be noticed. As the witnesses and the complainant are nearest relatives, their evidence cannot be disbelieved being interested witnesses. They being the real and natural witnesses of incident, their presence cannot be doubted. It was further submitted that the witnesses being born and brought up in that area have categorically deposed about the names of accused, their act with deadly weapons and their presence and hence, it cannot be said that they were not in a position to identify any person or their act. According to him, the evidence narrated by Raisingbhai and other eye witnesses as well as the complaint show consistency in evidence. He showed us the sequence namely, first there were altercation and three persons were abusing

Ramanbhai in filthy language and when Kabhaibhai went there to request them not to use abusive language, accused took it in other way and they with the deadly weapons in their hands assaulted Kabhaibhai. On hearing noise, complainant went there. Simultaneously, Kamlaben and son of the complainant Somabhai and witness Gordhanbhai followed them.

5.1 According to him, the witnesses have categorically deposed that accused were there along with deadly weapons and have used the same. The witnesses gave detailed description of the incident by stating that first three names were there in the assault of Kabhaibhai and thereafter in the incident of Ramanbhai also, three persons were there and hence, it cannot be said that there is a difference in narrating the accused involved the incident. They have narrated the individual incident regarding assault on a particular person. According to him, evidence on

record is very clear about the presence of all accused with deadly weapons with their respective roles due to their act, two young persons have lost their lives in presence of their parents, brothers and other nearest relatives. It was also submitted that there is no discrepancy regarding weapons used as being dharia or danti qua the particular person and any discrepancy if at all seen in giving the deposition may be the result of forgetfulness due to passage of time after the incident. Showing me the evidence of Gordhanbhai, it was submitted that there is no difference between two weapons except the length of front portion of danti and dharia. Even prosecution version has been supported by way of medical evidence i.e. post mortem note, evidence of doctor as well as FSL report. Moreover, dharia and other muddamal were found to have human blood which also support the say of the prosecution.

5.2 Mr.Kodekar further submitted that while

dealing with this type of matters, court should keep in mind the background of the witnesses, their economic status and other surrounding circumstances and minor discrepancy should not weigh on either side. Court has also to rely on the evidence as a whole.

5.3 Taking us through the evidence of I.O. and other witnesses, it was submitted that it is a case of illegal assembly as more than 5 persons were there at the place of incident and it has been proved through evidence of the eye witnesses and medical evidence and other evidence and, therefore, judgment and order of conviction rendered by the court below being just and proper may not be interfered with.

6. We have gone through the evidence shown to us by the learned counsel appearing for the respective parties. We have also gone through the judgments relied on by the learned counsel for the appellants. Keeping in mind the law laid down in

those reported judgments, we proceed further.

7. Both the learned counsel drew our attention towards oral evidence of injured eye witnesses namely, P.W.No.2 Raisingbhai S. Parmar Ex.32, the complainant as well as father of the deceased Ramanbhai and Kabhaibhai; P.W.No.11 Somabhai R. Parmar Ex.61, who is also the injured eye witness and brother of the deceased Ramanbhai and Kabhaibhai and also of P.W.No.12, Gordhanbhai Raghunathbhai, Ex.62, who is the neighbour, eye witness and relative of the complainant as well as of the accused. They also drew our attention towards FIR Ex.33 and other documentary evidence. The above referred three evidence are such from which one can decide the presence of the accused and can come to the conclusion as to whether there were more than five persons or not. For that, we will discuss the evidence of these witnesses.

8. First we will discuss the evidence of complainant

Raisingbhai, who has been examined as P.W.No.2 at Ex.32. At the cost of repetition, we say that he is the injured eye witness and father of deceased persons. When the incident happened at 10.00 p.m., he was in front of his house taking rest on charpai after supper. He has categorically deposed regarding motive and incident respectively in paras 2 and 3 of his chief examination. In paragraph 2, he has categorically deposed regarding motive by stating that since his son Ramanbhai purchased the land of one Melabhai Pratapbhai, it was not liked by Bhailalbhai and other accused and, therefore, disputes were going on between them. About the incident, he has deposed that on the day of incident at night, as accused No.2-Bhailalbhai Shanabhai, accused No.3-Ishwarbhai Mangalbhai and accused No.5-Kanubhai Punambhai were abusing his son Ramanbhai in filthy language, his another son Kabhaibhai went there and told them not to use

filthy language. Instead of responding to his request, they assaulted him and, therefore, Ramanbhai and others started running towards the said place. At that time, Ishwarbhai Mangalbhai and Bhailalbhai Shanabhai gave danti blow on the head of Ramanbhai and Kanubhai Punambhai gave danti blow on the backside of Ramanbhai and Kabhaibhai as a result of which, both fell down. Thereafter, other accused namely, Bhailalbhai, Kanchanbhai and Gordhanbhai Mangalbhai also assaulted Ramanbhai. Thereafter, when wife of the complainant Kamlaben and her another son Somabhai came there, they were also assaulted by other accused. Thereafter, another son of the complainant, Bhimsingbhai and neighbour Gordhanbhai Raghunathbhai and other relatives also followed and hence, accused left the place. Though he was thoroughly cross-examined by the learned counsel for the accused, nothing adverse came out.

9. It appears that the complainant, who was taking rest in charpai in front of his house, heard the filthy language being used by the accused on Kanubhai and, therefore, he was knowing that Kabhaibhai had already went to the house of accused and since even thereafter he heard the noise of the accused, he ran towards that direction and, therefore, the question of his not hearing the noise and not seeing the incident from his house and misidentifying the accused do not arise. It is the complainant who reached at the scene of offence as the house is hardly at a distance of 50 feet from the place of incident and, therefore, it can be said that he reached there within no time. In view of this, it cannot be said that he is the witness who has seen the incident at a distance from his house. We would say that he is the eye witness, who went to the scene of offence and the whole incident took place in his presence. This can also be

established from the injury received by him in the incident. It is true that he has not taken treatment for three days with police yadi. However, facts remain that he has lost his two sons and all formalities to go to the Police Station from the distance, lodging the complaint, accompany the police to the scene of offence, complete other formalities like drawing inquest panchnama, making arrangements for sending the dead bodies for post mortem, remaining present for showing the place of scene of offence and thereafter, on completion of post mortem, bring the dead bodies at home and thereafter cremation are all required to be completed by the complainant and which consumed some time and hence, if he has received any minor injury, he being the father may not pay much attention and may even forget because of sudden shock of murder of his two young sons. In the said circumstances, if the complainant, his wife and son did not take

treatment after two days with police yadi, it cannot be said that they did not receive any injury in the incident nor are they witnesses of incident.

10. It may be noted that two other witnesses also deposed the same version as has been given by the complainant. Apart from the above, FIR also disclosed names of accused with their specific role. Ultimately FIR is not the narration of each and every minor details of the incident and, therefore, something has not been mentioned in detail cannot mean that FIR is contrary to oral evidence. It may be stated that FIR is required to be lodged for putting the machinery in motion when an offence takes place. Here in this case, it appears that at the earliest FIR was lodged by the complainant and for that, they being poor people went on their own way and lodged the complaint disclosing the names of all accused and if any few things remained unanswered, it cannot

be said that whole FIR or evidence of eye witnesses can be discarded which otherwise is quite natural with their presence etc. and, therefore, we do not doubt the presence of all three eye witnesses at the place of incident at night time. It is required to be noted that the incident has taken place very near to the house of accused and complainant i.e. 10 feet away from the house of accused and all are relatives. Since it was about 10.00 p.m., naturally presence of all family members will be at home unless otherwise proved and, therefore, it can be safely said that they were there. Over and above, they get support from the injuries received by them which has not been doubted in cross-examination also. Not only that, no suggestion has been asked to the effect that they were not there. In these circumstances, we believe their presence at the scene of offence.

11. Once presence of the accused has been established

from the above eye witnesses, then question comes as to whether their evidence is trustworthy or not. Having gone through the evidences of all the eye witnesses as narrated hereinabove, we find that their evidences are trustworthy as nothing contrary came out from their cross examination turtling the balance. When a person is seeing brutal murder of his two sons by a mob of people in front of his eyes, while narrating the same in the FIR or in evidence after considerable period before the Court, if he is not in a position to give exact picture in plastic print, his whole otherwise believable evidence cannot be discarded.

12. From the aforesaid, it has been established that all the accused numbering five were there at the time of incident along with deadly weapons and they have used those weapons and continuously remained in illegal assembly till end having taken active part in the fulfillment of their

object. Merely in the evidence if it has not been asked to the witness as to who gave blow to Kabhaibhai, then naturally the witness will say Bhailalbhai gave blow to Kabhaibhai, Ishwarbhai and Kanubhai. Then question comes as to who gave blows to Ramanbhai. Then also, evidences to that effect are also on record. It is nothing but a consistent evidence and Court has to examine in that level and it has been certainly proved that all the accused numbering five were there at the time of incident. Even weapons held by the accused were recovered and medical evidence to that effect is also supporting the say of the prosecution.

13. It is clear that the witnesses have categorically deposed with detailed description that accused were there along with deadly weapons and have used the same and hence, it cannot be said that there is any discrepancy in narrating the weapon used by the accused being dharia or danti qua the

particular person and if any discrepancy is noticed in the deposition, it might be due to forgetfulness because of passage of time after the incident. If we go through the evidence of Gordhanbhai, no difference can be seen in the weapon used except the length of front portion of danti and dharia. Even prosecution version has been supported by way of medical evidence i.e. post mortem note, evidence of doctor as well as FSL report. Moreover, dharia and other muddamal were found to have human blood which also support the say of the prosecution. Hence, the panchnama drawn in the present case is a panchnama drawn under Sec.27 of the Indian Evidence Act. Apart from this, even motive has also been proved in this case.

14. In view of the above circumstances, court below came to the conclusion in one and half lines that the present appellants were members of illegal assembly. On a careful consideration of the

entire evidence, we are of the opinion that the present appellants were there being members of illegal assembly. Moreover, individual role of each appellant has also been established. The evidences from all angles establish individually as well as collectively the active role of each of the appellants in inflicting serious fatal blows with deadly weapons on the vital parts of the bodies of the deceased and causing injuries on complainant, his son Somabhai and wife Kamlaben.

15. It is true that Gordhanbhai Mangalbhai Parmar, the person who lodged the N.C. 30 minutes after the complaint has not been detained and hence on that ground the accused are required to be acquitted. It might be a minor negligence on the part of concerned police officer or it can be said that for the purpose of helping the accused, N.C. might have been taken because generally, N.C. is required to be taken on plain paper and

ultimately entries are made. Both are different registers and there might be two persons. Moreover, the person registering the complaint may not be knowing about the N.C. having been given and, therefore, non-arrest of the person went for registering N.C. is not a lapse on the part of prosecution entitling the accused to bring home the benefit of acquittal.

16. From the aforesaid, it is evident that case against the appellants-accused has been proved by the prosecution beyond reasonable doubt. Hence, judgment and order of conviction rendered by the learned Addl. Sessions Judge, Kheda at Nadiad, is just, legal and proper and are not required to be interfered with. The appeal therefore is required to be rejected.

17. This appeal is hereby rejected.

18. It is required to be noted that it is a matter wherein original accused Nos.4,7 and 8 were convicted by the court below under Sec.143, 323

and 504 read with Sec.149 and convicted for S.I. of 3 months. Even State has also not preferred any appeal. When it was held by the court that the present appellants and others were members of illegal assembly and remain continued till end, it was required for the court below to have awarded sentence accordingly. Instead of doing so, court tried to distinguish the accused into two groups and accused Nos.4,7 and 8 were awarded SI of 3 months only which was not noticed by the Legal Department. We are aware that in Legal Department, persons empowered to take decision for filing or non-filing of the appeals are on deputation from judicial side of the rank of Sessions Judge and, therefore, while examining the judgments, they should act only according to law and should not forget their status of being a Judge. It is a different matter if the opinion given is not accepted by the Government. However, when copy of the judgment comes up before the

Legal Department, utmost care should be taken while giving opinion to see that wrong signal should not be gone to the Society that even Judicial Officers of the rank of Sessions Judge is not applying their mind. We would not like to say much into the matter. However, we may say that the complainant looking to his poor economic condition might not be in a position to raise a dispute for non-filing of the appeal before the authority or might not be knowing whom should be approached for the same and which causes injustice to them. Hence, necessary care should be taken in future from all angles so that people would continue to maintain faith in the system.

19. Copy of this judgment be sent to Legal Department.

(R.P.DHOLAKIA,J.)

(S.D.DAVE,J.)

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